

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0129-WQ-E TCEQ ID: RN101274991 CASE NO.: 35265**  
**RESPONDENT NAME: Texas H<sub>2</sub>O, Inc.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input checked="" type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>

**SITE WHERE VIOLATION(S) OCCURRED:** Texas H<sub>2</sub>O, Inc., collection system located at the Sealy Bridge Resort near Granbury, on the west shore of Lake Granbury, Hood County

**TYPE OF OPERATION:** Wastewater collection and treatment service company

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** A complaint was received on December 3, 2007, alleging sanitary sewer overflows. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** A complaint was received but the complainant has not expressed the desire to protest this action or speak at Agenda.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on July 14, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Mr. Tom Jecha, Enforcement Division, Enforcement Team 3, MC 149, (51) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

**Respondent:** Mr. Jess W. Lewellyn, Sr., CEO, Texas H<sub>2</sub>O, Inc., Post Office Box 613, Mansfield, Texas 76063

**Respondent's Attorney:** Not represented by counsel on this enforcement matter

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> December 3, 2007</p> <p><b>Date of Investigation Relating to this Case:</b> December 4, 2007</p> <p><b>Date of NOE Relating to this Case:</b> January 4, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failure to prevent an unauthorized discharge from a sanitary sewer collection system. Specifically, on December 3, 2007, approximately 200 gallons of raw sewage was observed discharging out of a broken pipe onto the ground at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County, Texas [TEX. WATER CODE § 26.121(a)].</p> <p>2) Failure to notify the TCEQ of the unauthorized discharge. Specifically, an unauthorized discharge occurred on or about December 3, 2007, at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County, Texas, and the Respondent failed to notify the TCEQ [TEX. WATER CODE § 26.039(b)].</p>	<p><b>Total Assessed:</b> \$2,100</p> <p><b>Total Deferred:</b> \$420  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,680</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that on December 3, 2007, the Respondent performed the necessary repairs to the broken sewer pipe and disinfected the affected area.</p> <p><b>Ordering Provisions:</b></p> <p>2) The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, update operational guidance and conduct employee training to ensure that all unauthorized discharges are properly reported to the TCEQ; and</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision 2.a.</p>

Additional ID No(s): 0



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES

Assigned  
PCW22-Jan-2008  
23-Jan-2008

Screening

22-Jan-2008

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Texas H<sub>2</sub>O, Inc.  
Reg. Ent. Ref. No. RN101274991  
Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 35265  
Docket No. 2008-0129-WQ-E  
Media Program(s) Water Quality  
Multi-Media  
Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 2  
Order Type 1660  
Enf. Coordinator Libby Hogue  
EC's Team Enforcement Team 3

## Penalty Calculation Section

### TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$2,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, &amp; 7 \$0

Notes No enhancement due to Average Performer classification.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer  
Extraordinary  
Ordinary  
N/A X (mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$109 0% Enhancement\* Subtotal 6 \$0  
Approx. Cost of Compliance \$900 \*Capped at the Total EB \$ Amount

### SUM OF SUBTOTALS 1-7

Final Subtotal \$2,000

### OTHER FACTORS AS JUSTICE MAY REQUIRE

5%

Adjustment \$100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommend an upward adjustment of the penalty due to the avoided cost.

Final Penalty Amount \$2,100

### STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$2,100

### DEFERRAL

20%

Reduction Adjustment -\$420

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

### PAYABLE PENALTY

\$1,680

Screening Date 22-Jan-2008

Docket No. 2008-0129-WQ-E

PCW

Respondent Texas H<sub>2</sub>O, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35265

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101274991

Media [Statute] Water Quality

Enf. Coordinator Libby Hogue

**Compliance History Worksheet**

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No enhancement due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 22-Jan-2008

Docket No. 2008-0129-WQ-E

PCW

Respondent Texas H<sub>2</sub>O, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35265

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101274991

Media [Statute] Water Quality

Enf. Coordinator Libby Hogue

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent an unauthorized discharge from a sanitary sewer collection system. Specifically, on December 3, 2007, approximately 200 gallons of raw sewage was observed discharging out of a broken pipe onto the ground at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County. Samples of the discharge taken on December 3, 2007, and lab analyzed on December 5, 2007, indicated more than 240,000 most probable number per 100 milliliters of E-Coli bacterium was present in the sample, confirming that the discharge was wastewater.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

**Economic Benefit Worksheet**

**Respondent** Texas H<sub>2</sub>O, Inc.  
**Case ID No.** 35285  
**Reg. Ent. Reference No.** RN101274991  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$800	3-Dec-2007	3-Dec-2007	0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to repair the broken sewer line and disinfect the area. The date required is the date the discharge was first documented, and the final date is the date the Respondent repaired the broken sewer line and achieved compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance****\$800****TOTAL****\$0**

Screening Date 22-Jan-2008

Docket No. 2008-0129-WQ-E

PCW

Respondent Texas H<sub>2</sub>O, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35265

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101274991

Media [Statute] Water Quality

Enf. Coordinator Libby Hogue

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.039(b)

Violation Description

Failed to notify the TCEQ of the unauthorized discharge. Specifically, an unauthorized discharge occurred on December 3, 2007, at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County, Texas, and the Respondent failed to notify the TCEQ within 24 hours of the discharge.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$109

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

**Economic Benefit Worksheet**

**Respondent** Texas H<sub>2</sub>O, Inc.  
**Case ID No.** 35265  
**Reg. Ent. Reference No.** RN101274991  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$100	4-Dec-2007	30-Sep-2008	1.7	\$9	\$100	\$109

Notes for AVOIDED costs

Estimated costs to notify the TCEQ of the unauthorized discharge. The date required is the date notification was due and the final date is the date the Respondent is expected to achieve compliance.

Approx. Cost of Compliance

\$100

TOTAL

\$109



# Compliance History

Customer/Respondent/Owner-Operator:	CN600656201	Texas H <sub>2</sub> O, Inc.	Classification: AVERAGE	Rating: 0.63
Regulated Entity:	RN101274991	TEXAS H <sub>2</sub> O INC	Classification:	Site Rating:
ID Number(s):	UTILITIES	REGISTRATION	20814	
Location:	Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	January 15, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 14, 2003 to January 14, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Libby Hogue	Phone:	512-239-1165	

## Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

## Components (Multimedia) for the Site :

- |                        |   |     |
|------------------------|---|-----|
| A.                     | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | N/A |
| B.                     | Any criminal convictions of the state of Texas and the federal government.  | N/A |
| C.                     | Chronic excessive emissions events.   | N/A |
| D.                     | The approval dates of investigations. (CCEDS Inv. Track. No.)   | N/A |
| E.                     | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  |     |
| F.                     | Environmental audits.   | N/A |
| G.                     | Type of environmental management systems (EMSs).  | N/A |
| H.                     | Voluntary on-site compliance assessment dates.  | N/A |
| I.                     | Participation in a voluntary pollution reduction program.   | N/A |
| J.                     | Early compliance.   | N/A |
| Sites Outside of Texas |   | N/A |



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TEXAS H<sub>2</sub>O, INC.  
RN101274991**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-0129-WQ-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas H<sub>2</sub>O, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater collection and treatment service company located at 208 East Broad Street, Suite 109 in Mansfield, Johnson County, Texas (the "Company"). The Respondent maintains a collection system at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury in Hood County, Texas (the "Site").
2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 9, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.



6. An administrative penalty in the amount of Two Thousand One Hundred Dollars (\$2,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Six Hundred Eighty Dollars (\$1,680) of the administrative penalty and Four Hundred Twenty Dollars (\$420) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on December 3, 2007, the Respondent performed the necessary repairs to the broken sewer pipe and disinfected the affected area.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Company, the Respondent is alleged to have:

1. Failed to prevent an unauthorized discharge from a sanitary sewer collection system, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on December 4, 2007. Specifically, on December 3, 2007, approximately 200 gallons of raw sewage was observed discharging out of a broken pipe onto the ground at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County, Texas.
2. Failed to notify the TCEQ of the unauthorized discharge, in violation of TEX. WATER CODE § 26.039(b), as documented during an investigation conducted on December 4, 2007. Specifically, an unauthorized discharge occurred on or about December 3, 2007, at the Sealy Ridge Resort near Granbury, on the west shore of Lake Granbury, Hood County, Texas, and the Respondent failed to notify the TCEQ.



### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas H<sub>2</sub>O, Inc., Docket No. 2008-0129-WQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days of the effective date of this Agreed Order, update operational guidance and conduct employee training to ensure that all unauthorized discharges are properly reported to the TCEQ, in accordance with TEX. WATER CODE § 26.039(b); and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087





with a copy to:

Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

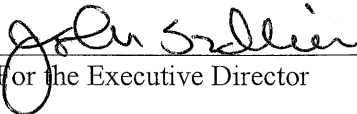
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

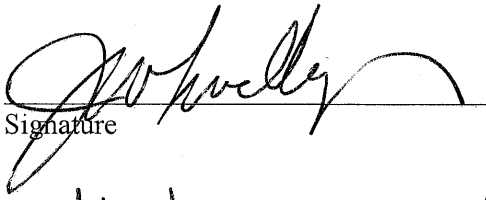
6/30/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

4/30/08  
Date

JOHN W. LEVELLE  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Texas H<sub>2</sub>O, Inc.

CEO  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

